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 Mellon Financial Corporation

MEMO ENDORSED

UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

-----X
 RAYMOND VAN COTT :
 :
 Plaintiff, :
 :
 - against - :
 :
 MELLON FINANCIAL CORPORATION :
 :
 Defendant. :
 -----X

(MGC)
 07 Civ. 5578 (MGC) (RLE)

**DEFENDANT MELLON FINANCIAL
 CORPORATION'S MOTION TO
DISMISS THE COMPLAINT**

Defendant Mellon Financial Corporation ("Mellon") hereby moves this Court, pursuant to Rule 12(b) of the Federal Rules of Civil Procedure, that the Complaint against it be dismissed on the following grounds:

1. Plaintiff's common law cause of action is preempted by the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.*, as amended ("ERISA").
2. Mellon is not a proper party to the claim raised in the Complaint.
3. Plaintiff has failed to name an indispensable party, the Mellon Financial Corporation Displacement Program.
4. Support for the present Motion is found in the separately filed Affidavit of Audrey F. Bonnett, the attachments thereto, and the brief filed herewith, all of which are incorporated herein.

Motion withdrawn,
 So ordered.
 July 9, 2007

S/ United States District Judge